

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

JAMES D. GIBSON,

Plaintiff,

v.

CAIRO SCHOOL DISTRICT NO. ONE,
et al.,

Defendants.

Case No. 08-cv-171-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on Plaintiff's Motion to Voluntarily Dismiss (Doc. 41) the instant action.

Plaintiff's motion is made pursuant to Federal Rule of Civil Procedure 41(a)(1), however, such rule is currently inapplicable. Rule 41(a)(1)(A)(i) allows dismissal of an action by a plaintiff without a court order at any time before service by an adverse party of an answer or of a motion for summary judgment, whichever first occurs. However, Defendants have already filed a collective answer. (*See* Doc. 14). Further, while Rule 41(a)(1)(A)(ii) permits dismissal upon the filing of "a stipulation of dismissal signed by all parties who have appeared," no such stipulation has been submitted to this Court. Accordingly, the Court **DENIES** the instant motion (Doc. 41).

The Court notes that Plaintiff's response to Defendants' Motion to Dismiss (Doc. 39) is due by December 21, 2009. However, due to Plaintiff's *pro se* status and apparent confusion regarding the applicability of Rule 41, the Court **ORDERS** that Plaintiff shall have up to and including January 8, 2009, to file said response.

IT IS SO ORDERED.

Dated: December 18, 2009

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE